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FM AMCONSUL HO CHI MINH CITY
TO RUEHC/SECSTATE WASHDC IMMEDIATE 5955
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RUCNARF/ASEAN REGIONAL FORUM COLLECTIVE

UNCLAS SECTION 01 OF 02 HO CHI MINH CITY 000551

SENSITIVE
SIPDIS

STATE FOR EAP/MLS AND EEB/TPP/IPE JURBAN
STATE FOR EEB/TPP/IPE FOR HALLOCK, WATTS, AND KEAT
STATE ALSO PASS USTR DBISBEE AND RBAE
AMEMBASSY BANGKOK FOR USPTO JNESS

E.O. 12958: N/A

TAGS: [ECON](#) [ETRD](#) [KIPR](#) [SOCI](#) [PGOV](#) [VM](#)
SUBJECT: VIETNAMESE RECORDING ASSOCIATION SLINGS TELECOM GOLIATH FOR
IPR COPYRIGHT VIOLATIONS

REF: HCMC 199

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¶11. (SBU) SUMMARY: Now that the dust has settled, the Recording Industry Association of Vietnam (RIAV) assesses that it scored a major victory earlier this year against a formidable local telecom player, FPT, in the battle against intellectual property infringement. After months of pursuing FPT (in partnership with Nokia) for violation of music copyrights, RIAV finally obtained an out-of-court settlement worth around \$300,000 U.S. Although RIAV had the legal upper hand in the dispute, the case's outcome proved to be less of a testament to the strength of Vietnam's legal system than a demonstration of RIAV's concerted use of sustained publicity, pressure, and, in particular, shame, as a winning strategy to force FPT/Nokia into compliance. Not least of all because RIAV represents the rights of some American artists, this is a particularly welcome precedent. END SUMMARY.

RIAV Steps Up

¶12. (SBU) The Recording Industry Association of Vietnam (RIAV), an association comprised of 27 Vietnamese recording industry companies representing Vietnamese and Vietnamese-American singers and composers, is dedicated to protecting intellectual property in the music industry in Vietnam. Director Huynh Tiet met with EconOffs on July 2 to explain RIAV's efforts to protect its members' intellectual property. The association has collection agreements with record companies and individual artists that produce and/or distribute music and has licensed twenty music websites featuring on-demand streaming for members' music. RIAV collects a portion of the revenue and distributes royalties to its members based on the websites' monthly tax reports. In addition, it also acts as a watchdog for internet sites that violate its members' copyrights and as a vocal advocate of intellectual property protection. For example, Tiet said shortly after RIAV was founded in late 2007, despite being underfunded and inexperienced, it went after two music websites that were poaching its members' songs and worked with Vietnamese ministries to shut down the websites.

FPT/Nokia Case Poses the Biggest Challenge to Date

¶13. (SBU) As part of a late-2007 promotional agreement between Finnish multinational Nokia and FPT, Vietnam's largest telecom company, Nokia offered a promotion package in which its cell phone buyers could go to a FPT-run website and download songs and ringtones from the roughly ten thousand files on offer. RIAV did have a licensing agreement with FPT's website, but not with Nokia. RIAV, representing the record companies that

produced and distributed most of the songs on the site, asserted that FPT had not rightfully sought "consent of the rights owners before transferring usage rights to a third party." While FPT had signed additional agreements with five distribution companies and with some singers to use their songs, RIAV said that FPT's agreements failed to comply with the copyright terms in the RIAV/FPT contract.

Negotiation, Public Shame, and one Lawsuit Later...

¶4. (SBU) Tiet explained that throughout 2008 RIAV pursued a three-pronged approach: preparing their legal case, negotiating directly with FPT/Nokia, and also engaging the local press about the FPT/Nokia copyrights abuses and spreading details of the lawsuit throughout the media. RIAV stated that it hoped the case would "set an example" and help raise IPR-related public awareness. Nokia was the first to admit impropriety in an April 2008 meeting with RIAV, but insisted that the blame lay entirely with FPT.

¶5. (SBU) RIAV negotiated with FPT but failed to reach an agreement to shut down the site and compensate RIAV members. As a result, in October 2008 RIAV filed a lawsuit against FPT for violation of music copyrights. For its part, Tiet said FPT resisted settling the case for months until Nokia pressured FPT into making the move by threatening to sue FPT in Singapore court for misrepresentation of its cell phone ring tone promotion agreement. Once FPT was on board with the settlement, it was just a matter of negotiating the amount. He stated that FPT agreed to "somewhere in the neighborhood of \$300,000 U.S." on the condition that the settlement terms not be publicly disclosed, adding that FPT practically begged RIAV to keep the payment quiet because FPT did not want any more publicity.

GVN Helpful, but not the Driving Force

¶6. (SBU) Tiet noted his surprise at the cooperation of the

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Vietnamese government, specifically the Ministry of Culture, Sports and Tourism (MoCST). He said the Ministry conducted an independent investigation into the matter, and eventually found that Nokia and FPT were liable, and noted that the GVN effort was driven by MoCST Vice Minister Tran Chien, who is also concurrently the president of RIAV. Because Nokia and FPT frequently reminded RIAV of their clout and influence in the country, Tiet believes that GVN support was essential and indicates an increased awareness and new level of effort by the government to protect intellectual property rights in Vietnam. Recent revisions to the IPR law that raise the fine for IPR infringement from 100 million dong (\$5,500 U.S.) to 500 million dong (\$27,700 U.S.) and GVN commitments to increased inspections also support this view, he concluded.

COMMENT

¶6. (SBU) RIAV's success suggests that while much work remains to be done on Vietnam's legal system, awareness of IPR is on the rise in Vietnam. This creates avenues for rights holders to better protect their property -- through negotiation and in the media. If domestic telecom giants like FPT balk at the prospect of a public trial, the industry has more leverage to pursue other transgressors. In what could be seen as a continuation of the "public shaming" approach, the HCMC office charged with enforcing copyrights recently held a press conference at which they displayed a range of books (including some with U.S. copyrights) that were being illegally reproduced and distributed by major publishers in Vietnam. We are anxious to see whether that session shames any of the publishers into stopping their illegal activities, but ultimately the answer has to lie in better enforcement and a better court system. END COMMENT.

¶7. (U) This cable was coordinated with Embassy Hanoi.
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